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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,835	03/09/2004	John P. Cole	030504	1237
43831	7590	07/12/2005	EXAMINER	
BERKELEY LAW & TECHNOLOGY GROUP 5250 NE ELAM YOUNG PARKWAY SUITE 850 HILLSBORO, OR 97124			NGUYEN, VI X	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/795,835

Applicant(s)

COLE, JOHN P.

Examiner

Victor X. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 03/2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group 1, claims 1-32 in the reply filed on 5/18/2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election **without traverse** (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-20, 22-29 rejected under 35 U.S.C. 102(b) as being anticipated by Kim (6,461,369).

Kim discloses in figures 2a-c, a hair transplanter having the limitations as recited in the above listed claims, including: a main body (30) comprises a first bore which centrally disposed therethrough, a nipple end portion (23) includes a second bore (22) centrally disposed therethrough, where a tubular punch means (29) exists in the form of a hollow cylinder and the tubular punch means is slidably disposed within the bore, a stabilizer means (24) disposes within the bore and in contact with the tubular punch means, where a head screw (26) has a threaded outer surface (fig. 2b), and where the end of the screw is

disposed in selectively contactable with at least one element from the group of the tubular punch means (29). As to claims 2-5, the stabilizer (24) includes a third bore (fig. 2c), and where the stabilizer means is stationary within the first bore, where the tubular punch means is slidably disposed with the second bore and the third bore, and where the tubular punch means is inherently capable of being angled about 30 degrees and about 90 degrees. As to claims 6-11, the head screw further has a fourth bore (33) centrally disposed through its length, and where the first bore extends from the first end portion to the second end portion of the main body, where the second bore extends from the first end portion to the tip portion of the nipple end portion (figures 2b-c). As to claims 12-20, the main body portion is substantially cylindrically shaped, where the first bore and the second bore have the same diameter, where the outer diameter of the tubular punch means can be smaller than the inner diameter of the second bore, and where the sharp end of the tubular punch means comprises a beveled edge (fig. 2c). As to claims 22-29, the tubular punch means is metallic, and note that the procedure in figures 2b-2c are capable of having the length dimensions of the nipple end which is in the range between 0.03 millimeters and about 10 millimeters, where the second bore is about 0.1 millimeters smaller in diameter than the outer diameter of the tubular punch means, and where the inner diameter of the tubular punch means can be in the range of between 0.5 millimeters and about 4.5 millimeters.

4. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Palmer (6,579,281).

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Palmer discloses in figures 16-17 and 24, a hair transplant having the limitations as recited in the above listed claims, including: a main body (402) comprises a first bore which centrally disposed therethrough, a nipple end portion (402b) includes a second bore (410) centrally disposed therethrough, where a tubular punch means (404) exists in the form of a hollow cylinder and the tubular punch means is slidably disposed within the bore, a stabilizer means (407) disposes within the bore and in contact with the tubular punch means, where a head screw (located at superior of element 210) has a threaded outer surface (fig. 24), and where the end of the screw is disposed in selectively contactable with at least one element from the group of the tubular punch means.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 21 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Kim (6,461,369).

Kim discloses the invention substantially as claimed. However, Kim does not disclose that the stabilizer means is comprises of an elastomeric material selected from the group consisting of polyolefin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the stabilizer means is comprises of an elastomeric material selected from the group consisting of polyolefin, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use or as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claims 30-32 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Kim (6,461,369).

Kim discloses the invention substantially as claimed, including: a nipple end portion (23), a tubular punch means (29), where the tubular punch means is slidably disposed within a bore such that its cutting end is capable of coinciding with the tip portion of the nipple end portion when the tubular punch means does not protrude outward from the tip portion (as best seen in fig. 2c(b)), a means (24) for adjusting the position of the tubular punch means within the bore. Kim is silent regarding the tubular punch means includes an inner diameter between 0.5 millimeters to 4.5 millimeters and an outer diameter is not exceeding about 5.0 millimeters, and where the total surface area of the nipple end is in the range of 5 square millimeters to about 25 square millimeters.

Nevertheless, Kim does disclose a tubular punch means and a nipple end portion, where changes in the size of a component involve merely routine skill in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make Kim's device with the tubular punch means includes an inner diameter between 0.5 millimeters to 4.5 millimeters and an outer diameter is not exceeding about 5.0 millimeters, and where the total surface area of the nipple end is in the range of 5 square millimeters to about 25 square millimeters, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re. Aller, 220F, 2d 454, 105 USPQ 233. As to claim 32, the device further comprises a threaded screw (fig. 2b) that has an end portion that is in contact with the tubular punch means.

Conclusion

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6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 5,439,475 to Bennet

U.S. Pat. No. 55,725,553 to Moenning

U.S. Pat. No. 5,707,362 to Yoon

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen
Examiner
Art Unit 3731

Vn *VN*
7/5/2005

Julian W. Woo

JULIAN W. WOO
PRIMARY EXAMINER